

REMARKS

Claims 1-19 are in this application. Claims 1, 10 and 19 have been amended. Reconsideration of the claims 1-19, as amended, is being requested.

Claims 1-19 were rejected under 35 USC 102(b) as being anticipated by Gitlin (6,018,528). The office action alleges that Gitlin discloses a scheduler which varies its scheduling (time span) according to the Bit Error Rate (BER). Col. 8, lines 42-45 were cited in support thereof. Additionally, the advisory action asserts that the BER indicates “the frequency at which the channel quality changes.” The advisory action further asserts that the BER is a percentage value, and if such value increases or decreases, it is equivalent to “rate of channel quality variation.”

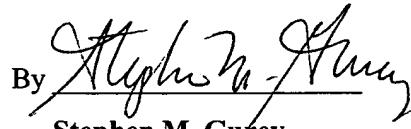
Based on telephonic discussions between applicants’ attorney and Examiner on October 3 and 6, 2006, claims 1, 10 and 19 have been amended to recite the limitation of “wherein the time span is based on a rate of change in channel quality.” Support for the claim may be found in page 8, line 28 through page 9, line 4. The amendments are being made to make it more clear that the claims involve “a rate of change in channel quality.”

Gitlin does not disclose or suggest that the scheduling is based on a rate of change in channel quality. BER is not a rate of change in channel quality. BER is a measurement of channel quality of a time interval, i.e., how many bit errors within some known time interval. An increase or decrease to the BER would indicate a change in channel quality. However, a mere increase or decrease to the BER does not indicate a rate of change in channel quality variation (or how fast the BER is changing). Accordingly, it is felt that claims 1, 10 and 19 are patentable 35 USC 102(b) over Gitlin.

Claims 2-9 and 11-18 depend upon, and include all the limitations of, claims 1 and 10, respectively. For the reasons stated earlier, Gitlin does not teach or suggest a time span based on a rate of change in channel quality. Accordingly, it is felt that claims 2-9 and 11-18 are patentable 35 USC 102(b) over Gitlin.

In view of the foregoing, allowance of all the claims presently in the application is respectfully requested, as is passage to issuance of the application. If the Examiner should feel that the application is not yet in a condition for allowance and that a telephone interview would be useful, he is invited to contact Applicants' attorney, **Jimmy Goo, at (908) 582-7886.**

Respectfully,
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